

CHAPTER III

DECLASSIFICATION AND DOWNGRADING

Section 1

GENERAL PROVISIONS

3-100 Policy

Information classified under E.O. 12356 (reference (g)) and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of subsection 2-202 despite the passage of time will continue to be protected in accordance with this Regulation.

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3-101 Responsibility of Officials

Officials authorized under subsection 2-603 to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this Chapter.

3-102 Declassification Coordination

DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

3-103 Declassification by the Director of the 1S00

If the Director of the 1S00 determines that information is classified in violation of reference (b), the Director may require the activity that originally classified the information to declassify it. Any such decision by the Director may be appealed through the Director of Security Plans and Programs, ODUSD(P), to the National Security Council (NSC). The information shall remain classified pending a prompt decision on the appeal.

Section 2

SYSTEMATIC REVIEW

3-200 Assistance to the Archivist of the United States

The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

- a. Provide guidance and assistance to National Archives and Records Administration (NARA) employees in identifying and separating documents and

specific categories of information within documents that are deemed to require continued classification; and

b. Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

3-201 Systematic Review Guidelines

The Director of Security Plans and Programs, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of DoD Directive 5200.30 (reference (v)) at least every 5 years.

3-202 Systematic Review Procedures

a. Except as noted in this subsection, classified information transferred to the NARA that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under subsection 3-200 as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARA will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified by the Archivist of the United States under E.O. 12356, the directives of the 1S00, and reference (v).

b. All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review conducted by DoD Components and personnel designated under subsection 3-200 shall proceed as follows:

1. Information over which the Department of Defense exercises exclusive or final original classification authority and that under reference (v), the responsible reviewer determines is to be declassified, shall be marked accordingly.

2. Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

c. Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

3-203 Systematic Review of Classified Cryptologic Information

Notwithstanding any other provision of this Regulation, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security

Service, and approved by the Secretary of Defense under E.O. 12356 and DoD Directive 5200.30 (references (g) and (v)).

3-204 Systematic Review of Intelligence Information

Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to be established by the Director of Central Intelligence after consultation with affected agencies.

Section 3

MANDATORY DECLASSIFICATION REVIEW

3-300 Information Covered

Upon request by a U.S. citizen or permanent resident alien, a federal agency, "or a state or local government to declassify and release such information, any classified information (except as provided in subsection 3-301) shall be subject to review by the originating or responsible DoD Component for declassification in accordance with this section.

3-301 Presidential Information

Information originated by a President, the White House staff, committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempt from the provisions of this section.

3-302 Cryptologic Information

Requests for the declassification review of cryptologic information shall be processed in accordance with the provisions of DoD Directive 5200.30 (reference (v)).

3-303 Submission of Requests for Mandatory Declassification Review

Requests for mandatory review of DoD classified information shall be submitted as follows:

a. Requests shall be in writing and reasonably describe the information sought with sufficient particularity to enable the Component to identify documents containing that information, and be reasonable in scope; for example, the request does not involve such a large number or variety of documents as to leave uncertain the identity of the particular information sought.

b. Requests shall be submitted to the Office of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) (entry point for OSD records), the Military Department, or other Component most concerned with the subject matter that is designated under DoD Directive 5400.7 (reference (p)) to receive requests for records under the Freedom of Information Act. These offices are identified in appropriate Parts of Title 32 of the Code of Federal Regulations for each DoD Component.

3-304 Requirements for Processing

Unless otherwise directed by the ASD(PA), requests for mandatory review shall be processed as follows:

a. The designated office shall acknowledge receipt of the request. When a request does not satisfy the conditions of paragraph 3-303 a., the requester shall be notified that unless additional information is provided or the scope of the request narrowed, no further action will be undertaken.

b. DoD Component action upon the initial request shall be completed within 60 days (45 working days). If no determination has been made within 60 days (45 working days) of receipt of the request, the requester shall be notified of his right to appeal and of the procedures for making such an appeal.

c. The designated office shall determine whether, under the declassification provisions of this Regulation, the requested information may be declassified, and, if so, make such information available to the requester, unless withholding is otherwise warranted under applicable law.. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, notice of the right to appeal the determination within 60 days (45 working days) to a designated appellate authority (including name, title, and address of such authority), and the procedures for such an appeal.

d. When a request is received for information classified by another DoD Component or an agency outside the Department of Defense, the designated office shall:

1. Forward the request to such DoD Component or outside agency for review together with a copy of the document containing the information requested, when practicable and when appropriate, with its recommendation to withhold any of the information;

2. Notify the requester of the referral unless the DoD Component or outside agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

3. Request, when appropriate, that the DoD Component or outside agency notify the referring office of its determination.

e. If the request requires the rendering of services for which fees may be charged under Title 5 of the Independent Offices Appropriation Act (reference (w)) in accordance with DoD Instruction 7230.7 (reference (x)), the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action upon the request.

f. A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested

information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this Regulation, the requester shall be notified of the reasons therefor. If so requested, an appellate authority shall communicate its determination to any referring DoD Component or outside agency.

g. The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

3-305 Foreign Government Information

Requests for mandatory review for the declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to subsection 11-202.

3-306 Prohibition

No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this Regulation.

3-307 Restricted Data and Formerly Restricted Data

Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Restricted Data" must be coordinated with the Department of Energy.

Section 4

DECLASSIFICATION OF TRANSFERRED DOCUMENTS OR MATERIAL

3-400 Material Officially Transferred

In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

3-401 Material Not Officially Transferred

When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of subsection 3-400, or when it is impossible to identify the originating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the

classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

3-402 Transfer for Storage or Retirement

Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARA for permanent presentation. Any downgrading or declassification determination shall be indicated on each document by markings as required by Chapter IV.

Section 5 -

DOWNGRADING

3-500 Automatic Downgrading

Classified information marked for automatic downgrading in accordance with this or prior regulations or E.Os. is downgraded accordingly without notification to holders.

3-501 Downgrading Upon Reconsideration

Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information (see subsection 1-603). Prompt notice of such downgrading shall be provided to known holders of the information.

Section 6

MISCELLANEOUS

3-600 Notification of Changes in Declassification

When classified material has been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall ensure prompt notification of all holders to whom the information was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify holders to whom they have transmitted the classified information. See subsections 4-400 and 4-404 for markings and the use of posted notices.

3-601 Foreign Relations Series

In order to permit the State Department editors of Foreign Relations of the United States to meet their mandated goal of publishing twenty years after the event, DoD Components shall assist the editors in the Department of State by easing access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for possible publication.

3-602 Reproduction for Declassification Review

The provisions of subsection 7-305 shall not restrict the reproduction of documents for the purpose of facilitating declassification review under the provisions of this Chapter or the Freedom of Information Act, as amended (DoD Directive 5400.7, reference (p)). After review for declassification, however, those reproduced documents that remain classified must be destroyed in accordance with Chapter IX.

SECTION 7

SECURITY REVIEW AND PUBLIC RELEASE

3-700 GENERAL

a. THE SECTION IMPLEMENTS DOD DIRECTIVE 5230.9, REFERENCE (PPP), FOR SECURITY REVIEW AND CLEARANCE OF DOD AND OSD INFORMATION FOR PUBLIC RELEASE.

b. DOD AND OSD POLICY IS FOR THE AMERICAN PEOPLE TO BE PROVIDED WITH MAXIMUM INFORMATION, LIMITED ONLY BY RESTRICTIONS NECESSARY TO SAFEGUARD INFORMATION REQUIRING PROTECTION IN THE INTERESTS OF U.S. NATIONAL SECURITY OR RESTRICTIONS ON RELEASE ESTABLISHED BY LAW.

c. INFORMATION IN ANY FORM ON PLANS, POLICIES, OR OPERATION OF THE DEPARTMENT OF DEFENSE, OSD, OR U.S. GOVERNMENT PROPOSED FOR PUBLICATION OR FOR RELEASE TO THE PUBLIC SHALL BE REVIEWED AND CLIMBED BY THE OFFICE OF THE ASSISTANT secretary OF DEFENSE (PUBLIC AFFAIRS) OASD(PA) BEFORE IT MEETS ANY OF THE CRITERIA LISTED IN SUBPARAGRAPHS 3-700 C1. THROUGH 3-700 C.5., BELOW. CASES OF DOUBT SHALL BE RESOLVED IN FAVOR OF SUBMISSION.

1. INFORMATION OF U.S. NATIONAL INTEREST.
2. INFORMATION ON SECURITY OF PERSONNEL AND PROPERTY.
3. INFORMATION ON U.S. OR FOREIGN NUCLEAR WEAPONS AND TECHNOLOGY OR U.S. CHEMICAL OR BIOLOGICAL WARFARE ACTIVITIES.
4. INFORMATION ON SUBJECTS OF POTENTIAL CONTROVERSY AMONG U.S. MILITARY SERVICES .
5. OTHER INFORMATION SPECIFICALLY DESIGNATED FROM TIME TO TIME BY OASD(PA) .

3-701 PUBLIC RELEASE OF INFORMATION

OSD PERSONNEL WILL NOT MAKE A COMMITMENT TO FURNISH A MANUSCRIPT TO ANY NON-DOD PUBLICATION OR ORGANIZATION UNTIL THE MANUSCRIPT HAS BEEN CLEARED BY OR UNTIL APPROVAL FOR THE COMMITMENT HAS BEEN OBTAINED FROM THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS) .

3-702 PUBLIC RELEASE OF CONTRACT INFORMATION

OSD COMPONENTS RESPONSIBLE FOR BEGINNING OR RENEWING CONTRACTUAL AGREEMENTS , OR FOR EXERCISING OPERATIONAL CONTROL OVER CONTRACTS ADMINISTERED BY OTHER DOD ORGANIZATIONS , SHALL ENSURE THAT AN APPLICABLE SECURITY CLAUSE IS INCLUDED IN THE CONTRACT. THIS CLAUSE SHALL REQUIRE THE CONTRACTOR TO SUBMIT ANY ARTICLES OR PAPERS, RELATED TO THE CONTRACT, WHICH ARE PROPOSED FOR PUBLIC RELEASE THROUGH THE RESPONSIBLE OSD COMPONENT FOR APPROVAL AND SUBSEQUENT DOD CLEARANCE .

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